

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**POLLY WEBBER f/k/a SCHWARZKOPF**

Claimant

VS.

**AUTOMOTIVE CONTROLS CORPORATION**

Respondent,  
Self-Insured

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Docket No. 225,012

**ORDER**

Claimant appealed the February 18, 2000 Award entered by Administrative Law Judge Jon L. Frobish. The Appeals Board heard oral argument on July 19, 2000.

**APPEARANCES**

William L. Phalen of Pittsburg, Kansas, appeared for claimant. Garry W. Lassman of Pittsburg, Kansas, appeared for respondent.

**RECORD AND STIPULATIONS**

The record considered by the Appeals Board and the parties' stipulations are listed in the Award.

**ISSUES**

This is a claim for a March 18, 1997 accident and alleged injuries to the right eye and face. Judge Frobish found that the accident caused hypertrophy in the right lower eyelid and awarded claimant a one percent permanent partial general disability.

Claimant contends Judge Frobish erred by finding only a one percent permanent partial general disability. Claimant argues that Dr. Jeffrey Brick diagnosed claimant as having blepharospasm and dry eye, which the doctor rated as a 15 percent whole body functional impairment. Further, Dr. Terry Rothstein confirmed the diagnosis of blepharospasm and rated claimant as having a 16.5 percent loss of visual field. Therefore, claimant argues that benefits should be awarded for both of those ratings.

Conversely, respondent contends that claimant did not prove that either the alleged blepharospasm or loss of visual field are related to the March 1997 accident. Respondent argues that claimant did not sustain any permanent physical impairment as a result of the March 1997 incident.

The only issue before the Appeals Board on this review is the nature and extent of injury and disability, if any.

**FINDINGS OF FACT**

After considering the entire record, the Appeals Board finds as follows:

1. On March 18, 1997, a coworker pointed an air hose at the floor blowing dust and foreign material around claimant's safety glasses and into her eyes. Immediately after the incident, claimant was taken to Dr. Mears, the company physician, who rinsed claimant's eyes and patched the right eye with gauze.
2. The next day claimant returned to Dr. Mears who again rinsed the right eye, re-patched it, and referred claimant to an eye specialist for additional treatment. Later, claimant consulted other physicians, including Dr. Lynn and Dr. Raymond E. Townsend. Claimant's attorney sent claimant to Dr. Jeffrey M. Brick for an evaluation. And Administrative Law Judge Nelsonna Potts Barnes ordered an independent medical evaluation by Dr. Terry B. Rothstein.
3. At the time of the July 1999 regular hearing, claimant testified that the right lower eyelid was continuing to swell and was constantly in spasm. Additionally, claimant testified that she had occasional cloudy vision, dry eyes, and matting. Claimant described the eye problems as follows:

Q. (Mr. Phalen) What are your current problems with your right eye?

A. (Claimant) The swelling, in the morning when I get up my eye is matted a lot so I have to wash it out with saline and I was instructed by the last eye doctor to put artificial tears and keep putting them in every several hours. My eye dries out and that's when the matting appears.

...

Q. The bottom muscle here is also puffy?

...

A. Right, it stays like that, some days it gets worse but usually in the morning and it clears up a little bit after I do the washing out.

...

Q. You also have cloudy vision?

...

A. It's like fog over the eyes, gets like a glaze over it. That's when I put the drops in. That helps a little bit for a couple of hours and I keep the drops in.<sup>1</sup>

4. In December 1999, the regular hearing was concluded by deposition. At that deposition, claimant introduced six photographs taken by her attorney earlier that month that show claimant's right eye partially closed. A coworker, Rolla N. Adey, who works with claimant on a daily basis, examined those photographs and in February 2000 testified that during the last three years he has not seen claimant's right eye closed to the extent as shown in the photographs.

5. As indicated above, Judge Barnes ordered an independent medical evaluation by Dr. Rothstein, an ophthalmologist. Dr. Rothstein examined and tested claimant in October 1997. When the doctor was deposed in January 2000, the doctor reviewed the photographs that were taken in December 1999 showing claimant's right eye partially closed and testified that when he examined claimant the right eye was not closed as depicted in the photographs. Examining one photograph in particular, Dr. Rothstein testified that it appeared claimant had muscle hypertrophy with spasm of the right lower lid and more of a voluntary contracture of the right upper lid. The doctor testified, in part:

Analyzing and making my decision or attempting to answer your question would be based on this particular photo and on this particular photo it looks like **she has muscle hypertrophy with spasm of the right lower lid and more of a voluntary contracture of the right upper lid without muscle hypertrophy.**<sup>2</sup> (Emphasis added.)

In his October 29, 1997 report, Dr. Rothstein noted that claimant had blepharospasm on the right and hypertrophy in the right lower eyelid. The doctor wrote:

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<sup>1</sup> Regular Hearing, July 14, 1999; pp. 13, 14.

<sup>2</sup> Deposition of Terry B. Rothstein, M.D., January 25, 2000; p. 47.

[Claimant] Has some blepharospasm on the right side. Appears to have mild hypertrophy of the orbicularis oculi muscle in both inferior eyelids but particular the right inferior eyelid. This causes narrowing of the right palpebral fissure. . . .

Additionally, Dr. Rothstein found that claimant's right eye had an eight percent reduced visual field using the Humphrey Visual Field Analyzer and a 16.5 percent reduced visual field using the Goldmann Visual Field. But the doctor found no objective evidence to relate the reduced visual field to the March 1997 incident at work. In the October 29, 1997 report, the doctor also wrote:

The Goldmann Visual Field in the right eye shows nonspecific constriction and is healthy in left eye. She demonstrated numerous false negative errors in the right eye making her responses unreliable. I believe the field is more compatible with a functional rather than an organic problem based on the nonspecific constriction. In view of the absence of an afferent pupillary defect, one cannot attribute the above field to optic atrophy from a prechiasmal lesion. Additionally, her optic nerve does not appear atrophic [sic]. Also I don't feel that the optic nerve configuration is compatible with this field of vision and therefore, one must presume that there is a large functional component to her field loss. To be fair to her, I have recommended a CT scan to rule out a lesion in the optic canal [sic] that could account for her dyschromatopsia, reduced vision and constricted field even in the absence of an afferent defect though I think the chances of finding significant pathology are minimal, I do feel we owe it to Poly [sic] to evaluate in this respect. If such a problem was present, it would not have been due to her injury in any case. I have recommended she speak with her attorneys concerning this test.

Dr. Rothstein did not attempt to rate the functional impairment, if any, that claimant sustained due to the hypertrophy or blepharospasm.

6. Between April 18, 1997, and May 9, 1997, claimant saw Dr. Townsend, an ophthalmologist, on three occasions. The doctor determined that claimant did not have any structural damage to the right eye and noticed no abnormality to the eyelids. According to Dr. Townsend's June 10, 1997 report, claimant had a functional visual loss. The doctor wrote:

. . . On evaluation, I was unable to see any structural damage or problems in the eye. There was a question from previous evaluations that she may have had macular edema from the trauma. Therefore, I did a fluorescein angiogram on the patient. The fluorescein angiogram was found to be within

normal limits.<sup>3</sup> It was my impression the patient had a functional visual loss which I discussed with her and her husband. I recommended she start on Livostin twice daily. I told the patient that by taking this medicine her vision would get better and the symptoms would resolve. I felt she did not have a damaged eye, but that this was only a functional problem. . . . I saw the patient in follow-up evaluation several weeks later; at which point, her vision had improved to 20/40 in the right eye. . . .

7. Dr. Brick, another ophthalmologist, examined and evaluated claimant on January 13, 1999. The doctor found that claimant had a decreased lid fissure on the right and diagnosed blepharospasm and dry eyes. The doctor indicated that blepharospasm is not typically associated with the type of incident that claimant sustained at work but that the accident probably started a chain of events that led to the condition. The doctor testified:

Q. (Mr. Phalen) Doctor, based upon your physical examination of Ms. Schwarzkopf, the medical records that you were provided by my law office, the history that you obtained from Ms. Schwarzkopf at the time of your examination, have you formed an opinion within a reasonable degree of medical certainty whether or not the blepharospasm that you have diagnosed was caused by her work-related injury at Automotive Control on March 18th, 1997?

A. (Dr. Brick) I don't know that I formed a reasonable opinion on that. I can say this, that according to what you told me and what your office provided me, she did not have that before this injury. The kind of injury she had is not really typically associated with blepharospasm, but that doesn't mean it couldn't be. So based on the fact that she didn't have it before and she had it afterwards, I guess that, yes, ipso -- something in law, I don't know, you guys, that's your field -- I guess it speaks for itself.

Certainly she had an injury, there was no question about that. That was fairly well documented. It's hard to say what sets off blepharospasm. Possibly this could have occurred spontaneously sometime other in her life, but maybe it wouldn't have. **But it seems as if the accident itself did start a chain of events which led to her having this blepharospasm.**<sup>4</sup> (Emphasis added.)

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<sup>3</sup> But Dr. Townsend notes on the correction sheet to the doctor's November 22, 1999 deposition that he did not do a fluorescein angiogram.

<sup>4</sup> Deposition of Jeffrey M. Brick, M.D., November 3, 1999; pp. 12, 13.

. . .

Q. Okay. And that in fact is your opinion, that the accident at Automotive Control was the cause of this condition of blepharospasm, based upon the fact that she didn't have it the day before and had it immediately thereafter, is that correct?

A. Correct.<sup>5</sup>

According to Dr. Brick, the incident at work resulted in dysfunction in the tissue adjacent to the eye. According to the doctor, the *AMA Guides to the Evaluation of Permanent Impairment* do not specifically address impairment to the eyelids. But the *Guides* do address impairment for disfigurement and scars. Using the *Guides'* ratings for disfigurement, Dr. Brick rated claimant's whole body functional impairment for constant spasm in the right lower eyelid at 15 percent, which is the only functional impairment rating in the record for the blepharospasm and hypertrophy.<sup>6</sup>

8. The Appeals Board finds that the greater weight of the medical evidence establishes that claimant has both blepharospasm on the right and hypertrophy of the right lower eyelid. The Appeals Board also finds and concludes that it is more probably true than not that those conditions were caused by the March 18, 1997 accident. Further, the Appeals Board finds that claimant has sustained a 15 percent whole body functional impairment as a result of the blepharospasm and hypertrophy for which she should receive workers compensation benefits in this claim. That functional impairment rating was provided by Dr. Brick, the only physician that attempted to rate the conditions.<sup>7</sup> The evidence does not establish that claimant's reduced visual field is related to the March 1997 accident. Therefore, claimant is not entitled to receive benefits for that condition.

9. Because claimant continues to work for the respondent, the claim for permanent partial general disability benefits is limited to the functional impairment rating.

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<sup>5</sup> Deposition of Jeffrey M. Brick, M.D., November 3, 1999; p. 38.

<sup>6</sup> Unfortunately, neither Dr. Brick nor any other witness specifically addressed the propriety of using the principles set forth in Chapter 9, Section 2, of the fourth edition of the *AMA Guides*, which deals with facial impairment.

<sup>7</sup> Uncontradicted evidence that is neither improbable nor unreasonable cannot be disregarded unless it is shown to be untrustworthy, and such uncontroverted evidence should ordinarily be regarded as conclusive. *Demars v. Rickel Manufacturing Corporation*, 223 Kan. 374, 573 P.2d 1036 (1978).

CONCLUSIONS OF LAW

1. The Appeals Board concludes the permanent partial general disability should be increased from one percent to 15 percent.
2. Because claimant's injuries comprise an "unscheduled" injury, the permanent partial general disability rating is determined by the formula set forth in K.S.A. 1996 Supp. 44-510e. That statute provides, in part:

The extent of permanent partial general disability shall be the extent, expressed as a percentage, to which the employee, in the opinion of the physician, has lost the ability to perform the work tasks that the employee performed in any substantial gainful employment during the fifteen-year period preceding the accident, averaged together with the difference between the average weekly wage the worker was earning at the time of the injury and the average weekly wage the worker is earning after the injury. **In any event, the extent of permanent partial general disability shall not be less than the percentage of functional impairment. . . . An employee shall not be entitled to receive permanent partial general disability compensation in excess of the percentage of functional impairment as long as the employee is engaging in any work for wages equal to 90% or more of the average gross weekly wage that the employee was earning at the time of the injury.** (Emphasis added.)

As indicated above, claimant continues to work for respondent and appropriately requests permanent partial general disability benefits based upon the functional impairment rating. Therefore, the Appeals Board finds and concludes that claimant has a 15 percent permanent partial general disability.

AWARD

**WHEREFORE**, the Appeals Board modifies the February 18, 2000 Award and increases the permanent partial general disability from one percent to 15 percent.

Polly Webber f/k/a Schwarzkopf is granted compensation from Automotive Controls Corporation for a March 18, 1997 accident and resulting disability. Based upon an average weekly wage of \$346, Ms. Webber is entitled to receive 62.25 weeks of permanent partial general disability benefits at \$230.68 per week, or \$14,359.83, for a 15 percent permanent partial general disability, making a total award of \$14,359.83, which is ordered paid in one lump sum less any amounts previously paid.

The Appeals Board adopts those orders set forth in the Award that are not inconsistent with the above.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of July, 2000.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: William L. Phalen, Pittsburg, KS  
Garry W. Lassman, Pittsburg, KS  
Jon L. Frobish, Administrative Law Judge  
Philip S. Harness, Director